IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 126 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANGLADAS DEVJIBHAI

Versus

LALITKUMAR N DOSHI

Appearance:

MR S.M.SHAH for MR GAURANG H BHATT for Petitioner

MR P.C.KAVINA for MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 28/09/2000

CAV JUDGEMENT

This is a Civil Revision Application filed by original defendant/tenant under Sec.29(2) of the Bombay Rents Hotel & Lodging House Rates Control Act, (for short the "Act"), challenging the correctness, legality, propriety and regularity of the Judgment Ex.16 dt. 28th January, 1988 passed by the learned Assistant Judge, Surendranagar (who will be referred to hereinafter as the learned Appellate Judge),in Civil Appeal No.67 of 1984, whereby the learned Appellate Judge was, by dismissing

the appeal, pleased to confirm the Judgment Ex.107 dt. 8th March, 1984 rendered by the learned 2nd Joint civil Judge (J.D.), Surendranagar (who will be referred to hereafter as the learned Judge of the trial Court) in Regular Civil Suit No. 221 of 1982.

The learned Judge of the trial Court, by rendering his said Judgment in Regular Civil Suit No.221 of 1982, allowed the plaintiff's suit directing the defendant to hand over vacant and peaceful possession of the suit godown to the plaintiff within one month from the date of his Judgment, and further directing the defendant to pay costs of the suit to the plaintiff and bear his own.

2. Here in this Civil Revision Application, the revision petitioner was the original defendant/tenant and revision opponent was the original plaintiff/landlord in Regular Civil Suit No. 221 of 1982 before the trial Court, and therefore, the parties will be referred to hereinafter as the plaintiff and defendant respectively at appropriate places.

3. The facts leading to this prevent Civil Revision Application, in a nutshell, are as follows:-

The plaintiff is an owner of suit godown (which will be referred to hereafter as the "suit premises") which is known as "Sayala-na-Utara" situated at Surendranagar. The said suit premises were let to the defendant for monthly rent at the rate of Rs.40/-. It is the case of the plaintiff that defendant was a tenant in arrears of rent for more than six months and that the defendant neglected to make the payment of said rent due from him to the plaintiff within one month from date of reeceipt of his notice undeer Sec.12(2) of the Act i.e. his case falling under Sec. 12(3)(a) of the Act. It is also the case of the plaintiff that the suit premises have not been used without reasonable cause for the purpose for which they wre let for a continous period of six months immediately preceeding the date of the suit i.e. his case falling under Sec.13(1)(k) of the Act.

Before filing the suit, the plaintiff by addressing a suit notice Ex.28 dt. 9/6/1982, terminated the tenancy of the defendant. Thereafter, plaintiff filed Regular Civil Suit No. 221 of 1982 against the defendant mainly for relief of eviction of the defendant from suit premises. In that suit, plaintiff had advanced aforesaid two grounds for claiming a decree of eviction.

4. In the suit, defendant appeared and contested the suit by filing his written statement dated 06-12-1982 at Ex.12, wherein he had practically denied all the pleadings of the plaintiff pleaded in the plaint of the suit. It is his case that he had sent money order of Rs.280/- on 26/6/1982, and that money order was accepted by the plaintiff. He has denied the case of the plaintiff for eviction of defendant from suit premises on the ground of non-user of suit premises. Lastly, he has requested the trial court to dismiss the suit of the plaintiff with costs.

5. From the pleadings of the parties, the learned Judge of the trial Court was pleased to frame issues at Ex.14. Keeping in mind the aforesaid issues, both the parties led their oral as well as documentary evidence in support of their respective cases. The learned Judge of the trial Court, after hearing the arguments of the learned advocates for both the parties, and after appreciating the evidence on record, did not accept the cae of the plaintiff so far as it relates to case falling under Sec.12(3)(a) of the Alct, but he accepted the case of the plaintiff falling under Sec.13(1)(k) of the Act, and therefore, by rendering his Judgment Ex.107, dated 8th March, 1984, the learned Judge of the trial Court allowed the suit of the plaintiff and decreed the suit in favour of plaintiff, direecting the defendant to hand over vacant and peaceful possession of the suit premises to the plaintiff within one month from the date of the order i.e. 8th March, 1984 with a further direction to defendant to pay costs of the suit to the plaintiff and bear his own.

6. Being aggrieved against and dissatisfied with the said judgment Ex.107 dated 8th March, 1984 rendered in Regular Civil Suit No. 221 of 1982, the original defendant/tenant preferred Civil appeal No.67 of 1984 to the District Court, Surendranagar. The learned Appellate Judge, after hearing the arguments of learned advocates for both the parties and after perusing records and proceedings of the suit and after analysing and appreciating the evidence of both the parties led in the case, by rendering his Judgment Ex.16 on 28th January, 1988 in said Regular Civil Appeal No. 67 of 1984, dismissed the appeal preferred by the defendant/tenant, meaning thereby the learned Appellate Judge confirmed the Judgment rendered by the learned Judge of the trial Court, who had passed a decree in favour of the plaintiff.

7. Being aggrieved against and dissatisfied with the

said Judgment Ex.16 dated 28th January, 1988 rendered by the learned Appellate Judge in Civil Appeal No.67 of 1984, the original defendant/tenant has preferred this present Civil Revision Application to this Court.

8. I have heard the arguments of learned advocates for both the parties, in detail, at length. Shri S.M.Shah, learned advocate for the revision petitioner has submitted certain xerox copies of relevant evidence tendered in Regular Civil Suit No.221 of 1982. Shri S.M.Shah has taken me through this evidence by reading that xerox copies of documents produced by him. Shri Kavina, learned advocate for the revision opponent has also taken me through the Judgment rendered by the learned Appellate Judge, which is challenged in this Civil Revision Application.

9. It is an admitted fact that initially, plaintiff had filed suit against defendant for eviction of defendant from suit premises mainly on two grounds -(i) that his case is falling under Sec.12(3)(a) of the Act and (ii) that his case is falling under Sec.13(1)(k) of the Act. The plaintiff has not filed any appeal against the Judgment by which decree was refused by the trial Court on the ground falling under Sec.12(3)(a) of the Act, and therefore, this present Civil Revision Application is limited only for plaintiff's case falling under Sec.13(1)(k) of the Act.

10. Shri S.M.Shah, the learned advocate for the revision petitioner has argued that following ingredients are required to be proved by plaintiff to secure a decree on the ground falling under Sec.13(1)(k) of the Act :

(i) Premises have not been used-

(a) without reasonable cause for the purpose for which they were let;

(b) for continuous period of six months immediately preceding the date of the suit.

Shri Shah has argued that looking to the words used in Sec.13(1)(k) of the Act, it is not only necessary for plaintiff to prove that suit premises have not been used for continuous period of six months immediately preceding the date of suit, but the plaintiff has further to prove that such non-user of the suit premises by tenant was without reasonable cause for the purpose for which they

were let. Admittedly, the suit premises is a Godown. The plaintiff is an owner of more than one godowns in the area which is known as "Sayala-na-Utara" in Surendranagar and out of that Godowns, one Godown has been let to defendant. Looking to the contents of plaint, it is not the case of the plaintiff that rent note was executed by the defendant for taking said suit Godown on rental basis from the plaintiff, and therefore, there is no documentary evidence to show as to for which purpose the said suit Godown was let to defendant. But from bare reading of the plaint, it is very much clear that suit Godown was let to defendant for business purpose. It is clarified in the plaint that said suit Godown was let to defendant for storing of the goods of the defendant for his business purpose, for which there is no dispute with regard to purpose of letting the suit Godown to the defendant.

11. Shri S.M.Shah, the learned advocate for the revision petitioner has argued that the learned Judge of the trial Court who framed issues at Ex.14 has framed issue with regard to non-user of suit premises at Issue No.2. He has put much emphasis on this Issue No.2 by reading it and then argued that the learned Judge of the trial Court has not mentioned in Issue no.2 that defendant is a non-user of the suit premises since more than six months without reasonable cause. He has argued that absence of words " without reasonable cause" in said Issue No.2 has caused serious prejudice to the defendant. He has further argued that had the learned Judge of the trial Court mentioned the words "without reasonable cause" immediately after the words " more than six months " in Issue no.2, possibly defendant would have led his evidence to prove that non-user of the suit Godown was "with reasonable cause", if the Court comes to a conclusion that plaintiff has proved the case of non-user of the suit premises for a continuous period of six months immediately before the date of filing of the suit. He has cited an authority of LUHAR JAGJIVANBHAI RAMJIBHAI AND OTHERS VS. MUKUNDLAL PITAMBARDAS SHAH , reported in 1987(1) 7 G.L.R. 395 wherein it has been held that-

" In order to succeed under Cl.(k), the landlord has to prove not only non-user or change of user but has also to prove that it is without reasonable cause.

In that cited case, the landlord had utterly failed even to allege and prove absence of reasonable cause, and on the other hand, reasonable cause was duly established by long user for the purpose of business to

the knowledge of the landlord and in view of that, in cited case, the decree of eviction passed by the lower court was set aside.

12. Shri S.M.Shah, the learned advocate for the revision -petitioner has argued that when the learned Judge of the trial Court has not mentioned the words "without reasonable cause" in Issue No.2, then the defendant, keeping in mind the said Issue No.2, led evidence only to prove that suit Godown has been continuously used for six months. He has further argued that alternatively, defendant could have led his evidence for "reasonable cause" provided plaintiff has proved his case of non-user of suit Godown for a continuous period of six months before filing the suit, and thus, defendant has been seriously prejudiced.

Aforesaid cited authority is not applicable to this present case merely on the ground that the plaintiff has averred specifically in Para 5 of the plaint that defendant is not using the suit Godown for more than six months and keeps that Godown closed without reasonable cause, and therefore, in this case, pleading was there from side of plaintiff. If we read the written statement Ex.12 filed by the defendant, we find that in Para 6 of said written statement, defendant has come out with a specific case that it was not true that he is not using the Godown and keeps it closed. He has averred positively that he is using Godown, and therefore, plaintiff is not entitled to evict him from the suit premises. It may be noted that both the parties were fully aware of the fact that the learned Judge of the trial Court is going to decide a case of the plaintiff falling under Sec.13(1)(k) of the Act and keeping in mind the ingredients of Sec.13(1)(k) of the Act, both the parties have led their respective evidence in that suit.

13. Shri Kavina, the learned advocate for the revision opponent has argued that here in this case, evidence of defendant is very much necessary to be considerd to meet with the arguments advanced by Shri S.M.Shah. The defendant has entered into witness-box and has given his evidence at Ex.38. The defendant has deposed in Para 8 of his deposition that in the year 1968-66, he started his business in name and style of "Mangaldas Devji" and that business was continuous and for that business, he is using the suit Godown. He has further deposed that he is making use of suit Godown since 1965-66 and he is storing the business articles of grocery like sugar, chillies, coconuts, turmeric etc. etc. He has further deposed that he is carrying on his

business by sitting in Godown for about two to four hours, daily. Thus, defendant has made out his case that he has never closed the suit Godown. It is not true that suit Godown has never been used within six months immediately before the date of filing of the suit.

14. Shri Kavina, the learned advocate for the revision opponent has argued that in view of what is deposed to by defendant himself in his evidence, now for plaintiff question does not arise to prove the fact that suit premises had not been used by defendant without reasonable cause because it is not the case of the defendant that suit premises have not been used by him. Question will arise for plaintiff to prove absence of reasonable cause for premises having not been used by tenant will arise only if defendant comes with a case that suit premises have been kept closed for continuous period of six months prior to the date of filing of the suit.

15. Looking to evidence of defendant, defendant was very much conscious when he gave his evidence that if he would depose that suit premises have not been continuously used for six months prior to the date of filing of the suit, then it would be for him to prove that suit Godown was not used for some reasonable cause, and therefore, here in this case, defendant has, from the very beginning advanced his case that suit premises have never been kept closed prior to filing of the suit, and on that point, defendant has led certain documentary evidence also. At this stage, it would be necessary to refer an authority of MOLAR MAL (dead) THROUGH LRS. VS. M/S KAY IRON WORKS (P) LTD., reported in AIR 2000 SUPREME COURT 1261, wherein it has been held in Para 7 as follows :

" We are not inclined to accept the first two points raised on behalf of the appellant before us. It is true in the original eviction petition all the material particulars of the requirement of the landlord were not mentioned in detail, but then in the rejoinder application all the necessary particulars are given by the landlord, notice of which the appellant had and the original authority had struck a proper issue on this question and parties understood each others case and led evidence on this issue, though Rule 4 of the Rules doe require the landlord to give material particulars, this Court has held with reference to the same rule in the case of M/s. Rubber House v. M/s. Excelsior Needle

> Industries Pvt. Ltd. (1989) 2 SCC 413): (AIR 1989 SC 1160) that the said rule is not mandatory and is only directory. Therefore, the fact that the landlord did not give all the material particulars of his requirement in the first instance cannot be made a ground for rejection of the application.".....

And therefore, when there is no reference of "without reasonable cause" in Issue No.2 framed by thee learned Judge of the trial Court at Ex.14, it cannot be said that the parties were not knowing the case of each other. The defendant was well aware of the fact that plaintiff has filed a suit for eviction of suit premises on the ground falling under Sec.13(1)(k) of the Act. At this stage, it is necessary to know that plaintiff has pleaded the facts regarding necessary ingredients required to be proved for a case under Sec.13(1)(k) of the Act in Para 5 of his plaint, and therefore, defendant cannot agitate on the ground that absence of words " without reasonable cause " in Issue No.2 framed by the learned Judge of the trial Court, has prejudiced the case for defence of the defendant. Therefore, this first contention raised by Shri S.M.Shah cannot be accepted.

16. The second contention of Shri S.M.Shah is to the effect that looking to Sec. 13(1)(k) of the Act, plaintiff is required to prove that the premises have not been used without reasonable cause for the purpose for which they were let for continuous period of six months immediately preceding the date of the suit. The plaintiff filed his suit on 8/9/1982, and therefore, he is required to prove that during last six months prior to 8/9/1982, the defendant did not use the suit Godown for the purpose for which it was let, during the period in between 8/3/1982 and 8/9/1982. To prove the fact that defendant never closed the suit Godown within aforesaid six months, he has led certain documentary evidence in support of his oral evidence. At this stage, it is required to know as to for what purpose the suit Godown was let to defendant. In Para 1 of the plaint Ex.1, plaintiff has categorically stated that Godown has been let to defendant for business purpose. He has also explained the use of Godown by stating in Para 1 of plaint that use for business purpose means to store the goods meant for business in said Godown. Shri S.M.Shah, the learned advocate has argued that looking to the nature of use for which the suit Godown was let, it was not necessary for all times to store the goods in Godown in all the available space. It may happen that in business in slake season, Godown may not be utilised for

storing goods completely in full space, and in some season when business is on prime time, Godown may be found vacant also, and therefore, looking to nature of use, the space for Godown may not be used for all the days, and therefore, plaintiff cannot expect that defendant should use suit Godown with goods fully utilising all the space of the Godown. Under the circumstances, merely because, some less quantity of goods was found in Godown, it cannot be said that the suit Godown is not being used for the purpose for which it is let.

17. Shri S.M.Shah, the learned advocate for the revision petitioner has produced a paper book containing xerox copies of certain documents namely copy of plaint, copy of written statement, copies of depositions and certain documents etc. etc. From Bill Book, he has produced certain office copies of bills issued by defendant to his customers. Bill book is produced at Ex.48. One bill dt. 15/1/1978 for Rs.77/appears to have been issued for sale of gunny bags containing coconuts issued in favour of Hasanali Pirmiya. Then bill dt. 18/1/1978 is for Rs.87/- for gunny bags of chillies issued in favour of Vanaji Ladhaji. Third bill dt. 30/2/1978 is for Rs. 137-50 for gunny bags of chillies issued in favour of Patel Kanaji Laxmanji. Shri S.M.Shah has argued that looking to these bills, it is crystal clear that defendant is carrying on business of coconuts, chillies, etc. He has also produced certain Purchase Bills. Ex.54 is a bill in name of Mangal Devjibhai i.e. defendant issued by M/s. Dungarmal Dhanraj & Co. under which defendant purchased sugar in quantity of 2 gunny bags. That bill is at Ex.54. Ex.55 is another bill of same M/s. Dungarmal Dhanraj & Co. under which defendant purchased certain articles worth Rs. 450/-. It is dated 31/10/1983. Except bill Ex.70, all other Purchase Bills are for the period subsequent to date of filing of the suit, and therefore, that bills are not relevant for Issue No.2 framed by the learned Judge of the trial Court. Ex.70 is a bill dated 24/3/1982 issued by M/s. Champaklal Chandulal. By Ex.70 dated 24/3/1982, defendant purchased 75 Nogs. of coconuts contained in gunny bag. This bill Ex.70 is for Rs. 121-50 Ps., and therefore, it can be said that defendant had purchased goods for his business within six months prior to the date of filing of the suit, and therefore, his business was going on within six months. Likewise, defendant has produced one duplicate Cash Memo Ex.75 dated 10/7/1982 by which the defendant purchased certain articles worth Rs.40/- from Ramniklal Raychand. Ex.76 is also a duplicate bill dated 5/7/1982 by which defendant

purchased some article in quantity of five from Shah Ramniklal Raychand. Likewise he has produced bills Exs.77, 78 and 79 dated 08/04/1982, 05/04/1982 and 31/03/1982 respectively to show that defendant purchased articles from M/s. Champaklal Chandulal.

18. Shri S.M.Shah, the learned advocate for the revision petitioner has argued that the learned Appellate Judge has discussed last bill in Para 13.7. He has also discussed with regard to Bill Book Ex.48 from which certain bills of sale have been produced by the defendant. Shri S.M.Shah has argued the learned Appellate Judge has observed in Para 13.8 that apparently, all the documentary evidence show that these purchases are not for selling from the suit Godown but are most likely to be purchased for his household use. Shri S.M.Shah has argued that this finding of the learned Appellate Judge is perverse, because he has made certain inference without any base. He has argued that the learned Appellate Judge has not come to a conclusion that these all bills and documentary evidence are bogus and false. From all these documents, he he has come to a conclusion that all these purchases were made for household use and not for business purpose. He has argued that there is no evidence on record to make such type of inference which is made by the learned Appellate Judge, and therefore, the finding of the learned Appellate Judge is perverse. He has argued that revisional court can read evidence and decide as to whether the conclusion is correct or not. He is not expecting this revisional Court to reappreciate the evidence. He has argued that when the learned Appellate Judge has based his finding on mere inferences, then that finding cannot be said to be according to law, and therefore, whatever final conclusion has been reached by him is perverse. For this, he has cited an authority of Morar Mal (dead) (supra) in which it has been held in Para 7 as follows:-

" It is to be noticed that under sub- section (6) of Section 15 of the Act, the High Court as a revisional authority has the power to call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order and is entitled to pass such order as it may deem fit. The power vested in the High Court under this provision of law is much wider than the power conferred on the High Court under Section 115 of the C.P.C. In the process of satisfying itself

> as to the legality or propriety of an impugned order, the High Court in a given case can go into the finding of fact arrived at by the Courts below and, if found necessary, reverse such a finding of fact. Of course, this Court has in many cases cautioned that this power is not to be used as a revisional Court in a routine manner but to be used only when the revisional Court comes to the conclusion that the last Court of fact has arrived at a conclusion which is not perverse or possible to be accepted on the materials placed before it.

19. Under the circumstances, when the plaintiff relies on evidence of defendant for Issue No.2 then that evidence of defendant can be said to have been accepted by plaintiff and when defendant has deposed that he started his business in the name of Mangal Devji in the year 1965-66 and on the date of his deposition, that business was continued to be carried on by him. He has further deposed that for his business, he is using Godown since 1965-66. He is dealing in grocery items like sugar, chillies, coconuts, turmeric etc. Shri S.M.Shah has argued that Mr. Kavina has based his arguments on evidence of defendant which is to the effect that defendant used to sit, for two to three hours in a day in the Godown for his business purpose. From evidence of defendant, it appears that defendant is using some portion of Godown for storing business goods and some portion of Godown is being use as a shop. Now when the case of the plaintiff is such that suit premises were let to defendant for business purpose and more particularly to store the business articles in the Godown, it cannot be said that defendant has stopped using the Godown. He is using the Godown for storing business articles in some part of the Godown, and some other part of the Godown, is being used as a shop, and therefore, nature of use is not changed. Generally, a businessman who is carrying on such type of business, used to keep Godown for storing business articles in quantity and he used to withdraw articles to be put in the shop as and when required, and therefore, if defendant is using Godown for both the purposes -for storying articles of business and for running a shop, then as per arguments of Shri S.M.Shah, it cannot be said that defendant is not using the suit premises for the purpose for which it was let.

20. Shri S.M.Shah has argued that there is no provision with regard to part user in Sec.13(1)(k) of the Act. He has drawn my attention to Sec. 13(1)(e) of the Act which is for subletting of the suit premises. In

Sec.13(1)(e) of the Act, legislature has used the words "lawfully sublet the whole or part of the premises" with some purpose. Here in Section 13(1)(k) of the Act, the legislature has not used the words like "part of the premises" with the words - "which have not been used without reasonable cause for the purpose", and therefore, if defendant is using the Godown for storing business articles in some part of the Godown, then it can be said that that use is continuous and Seec.13(1)(k) cannot be said to have been attracted in the case of the plaintiff. He has further argued that to run a business is an ancillary purpose for storing goods articles in Godown. After all the purpose for letting Godown was a business purpose and plaintiff has clarified in Para 1 of the plaint that that Godown is let only for storing the business articles. When defendant himself is sitting in the Godown to run a business along with storing of articles in the same Godown, then to my mind, there is no "non-user" of Godown for which it was let to defendant.

21. The learned Appellate Judge has observed in Para 11 of his Judgment Ex.16 that evidence led by the defendant is to the effect that he is doing business in the suit Godown and further that defendant has not taken any contention in the written statement Ex.12 that he is doing business in the suit Godown. On basis of this evidence, he has come to a conclusion that it is, therefore, clear that the whole evidence of the defendant to the effect that he is doing business in the suit Godown is an afterthought. He has further held that burden is on the plaintiff to prove that defendant is not using the suit Godown within six months prior to filing of the suit. Thus the learned Appellate Judge has categorically stated, that there is an evidence led by the defendant to the effect that he is doing business in the suit Godown, meaning thereby, defendant is using the suit Godown for his business. The purpose of business can be divided into two parts -one to store the business goods articles in the Godown and second to run a business of that very articles by sitting in the Godown for two to four hours every day. Thus, there is no change in user of the suit Godown because after all, suit Godown was let to defendant for business purpose. Of course, sub-purpose has been clarified by the plaintiff in the plaint that Godown was let for storing of the business articles. Thus, the approach of the learned Appellate Judge has totally been diverted from a case of non-user to change of user of the suit Godown. Recently the Hon'ble Supreme Court has held in case of JAGDISH LAL VS. PARMA NAND, reported in (2000) 5 SUPREME COURT CASES 44, that-

" Where the new business started by the tenant in the premises let out to him was an allied business or a business which was ancillary to the main business, it would not amount to change of user."

It is further held that -

" It is true that where a premises is let out for commercial purposes, carrying on of a new business activity therein would not change the nature of the building and it would still remain a commercial building.

It is further held that -

" Having regard to the provisions of the Act and the intendment of the legislature in providing that the tenant would not use the premises for a purpose other than that for which it was let out, the new business should either have some linkage with the original business, which under the agreement of lease the tenant was permitted to carry on, or it should be an allied business or ancillary to that business."

Under the circumstances, when the suit Godown was let to defendant for business purpose and more particularly by qualifying purpose for storing of the business goods articles, then some part of the premises, if used for storing of the business articles and some part of the suit premises is used for running the business of that very articles which are stored in that Godown, then to run a business in the Godown is an ancillary to that business and in that case, it cannot be said that use of the suit premises have been changed. No doubt, plaintiff has not filed suit for eviction of suit premises on the ground that defendant has changed the purpose for which the suit Godown was let. Looking to the evidence, when the learned Appellate Judge states in his Judgment that there is an evidence led by the defendant to the effect that he is doing business in the suit Godown, then to my mind, it cannot be said that suit premises have not been used without reasonable cause for the purpose for which they were let for continuous period of six months immediately preceding the suit, because to run a business by sitting in the Godown is an ancillary purpose for that business which was being run by the defendant prior to six months before the date of the suit. The plaintiff deposed from his personal knowledge that the suit Godown

is kept closed and to substantiate that say, he has deposed that suit Godown is situated at a distance of 200 feet from the shop of the plaintiff. Plaintiff is interested to get the decree under Sec.13(1)(k) of the Act, and therefore, naturally he would say that suit Godown is kept closed. He has not examined any neighbour either residing there or carrying on business, in neighbourhood of the suit Godown to substantiate his say. The learned Appellate Judge has also observed that defendant has led evidence to disprove that he is not using the suit Godown. He has discussed evidence with regard to defendant in Para 13 of his evidence and ultimately he has come to a conclusion that defendant is not doing business in the suit Godown and he has concocted his evidence to prove that he is doing business in the suit Godown. When there is an evidence of defendant to substantiate that he is using the suit Godown, then that evidence cannot be discarded only on the ground that defendant purchased business goods articles for less amount in the following years :-

Year Amount

1978 : Rs. 99-00
1979 : Rs. 493-00
1980 : Rs.1,980-00
1981 : Rs. 886-00
1982 : Rs. 882-00

Thus there is an evidence to the effect that defendant had purchased goods articles during the period from 1978 to 1982 and figures of value of the goods purchased appear somewhat lesser than what they ought to be. From the above figures, it is crystal clear that defendant purchased goods articles of which business is being carried on by him. The learned Appellate Judge has straightway made an inference that these purchases are not for selling from the suit Godown, but are most likely to be purchased for his household use. To come to this conclusion, he has made an inference based on no evidence. There is no material on record to suggest that these articles were purchased for household use. It is possible that defendant's business was not well flourished at the relevant time. We know that in business, there are ups and downs. Sometime, a businessman may earn a profit in his business and sometime he may incur a loss also. Sometime, his financial condition may be weak to invest money for purchase of business goods articles in large quantity. He may invest a little amount for purchase of business articles. Merely because, figures of purchases are of

lesser value, no inference can be drawn that purchases were for household use, Shri S.M.Shah has vehemently argued that this is a fit case in which this revisional court should interfere with the finding of the learned Appellant Judge.

22. As against aforesaid contention, Shri Kavina, the learned advocate for the revision opponent has argued that scope and ambit of Seec.29(2) of the Act is very much limited and circumscribed and this court cannot rehear and reappreciate the evidence led by both the parties. I do agree with this proposition of law but at the same time, a question has arisen for consideration as to whether the High Court in its revisional jurisdiction can re-assess or re-evaluate the evidence only to come to a conclusion that finding of the learned Appellate Judge is reasonable one. The Hon'ble Supreme Court in the case of VANITA JAIN vs. JAGJIT SINGH, reported in (2000) 5 SCC Page 1, while considering that question, has held that

> " The High Court cannot enter into appreciation or reappreciation of evidence merely because it is inclined to take a different view of the facts, as if it were a court of facts".

But at the same time, the Hon'ble Supreme Court has further held that

> " However, the High Court is obliged to test the order of the Rent Controller on the touchstone of whether such an order is in accordance with law. For that limited purpose, the High Court would be justified in reappraising the evidence only for a limited purpose of ascertaining as to whether the conclusion arrived at by the fact-findings court is wholly unreasonable."

Keeping in mind aforesaid legal position, for powers of the High Court in its revisional jurisdiction, High Court can certainly reappreciate the evidence to decide as to whether a conclusion reached by the learned Appellate Judge is wholly unreasonable or reasonable. When there is no evidence to infer that the articles purchased were for household use, then inference based on no evidence can be said to be unreasonable and therefore that finding cannot be said to be a finding "according to law".

23. In the paper book supplied by Shri S.M.Shah, there are certain bills of purchases. One of such bills is at Ex.70 which is dated 24/3/1982. It is for purchase

of coconuts in one gunny bag containing 73 Nogs. of coconuts for an amount of Rs.121-50 Ps. The plaintiff filed this suit on 8/9/1982. He is required to prove the fact that suit premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit i.e. during the period in between 8/3/1982 and 8/9/1982. Admittedly, the defendant is carrying on business of coconuts, chillies and such other articles. Aforesaid bill Ex.70 shows that he purchased 75 Nogs. of coconuts on 24/3/1982 i.e. within six months. In no case, an inference can be drawn that 75 Nogs. of coconuts were purchased for household use, and therefore, the conclusion reached by the learned Appellate Judge is totally unreasonable. He has not taken into consideration this bill Ex.70 also, and thus, the plaintiff has failed to prove the ingredients required to prove his case falling under Sec.13(1)(k) of the Act.

24. Looking to the discussion made by the learned Appellate Judge in his Judgment, he has altogether changed a track of appreciating evidence from case of non-user to case of change of user. When plaintiff has come with a specific case under Sec.13(1)(k) of thee Act, then decree cannot be passed on the ground of change of user.

25. In view of the discussion made hereinabove, the learned Appellate Judge has not appreciated evidence in the manner in which it ought to have been appreciated. He has reached a conclusion on the basis of inferences and conjectures for which there is no evidence, and therefore, this Civil Revision Application deserves to be allowed and therefore, the same is accordingly allowed. The Judgment of the learned Appellate Judge is found to be " not according to law" and hence it is required to be set aside. Hence Judgment Ex.16 dated 28/1/1988 rendered by the learned Assistant Judge, Surendranagar in Civil Appeal No.67 of 1984 is set aside and consequently the Judgment Ex.107 dt. 8/3/1984 rendered by the learned 2nd Joint Civil Judge (J.D.), Surendranagar in Regular Civil Appeal No.221 of 1982 is also set aside. Rule is made absolute to that extent. Interim relief granted by this Court on 23-02-1988, is made absolute. There shall be no order as to costs.

Date:28-09-2000. (H.H.MEHTA,J.)
ccshah